



Regulatory Advisory

March 27, 2009



TRU Advisory: 08-15, Rev. 3

Six-Month Grace Period for First In-Use Performance Standard Compliance Date and Revised TRU Registration and Operator Report Schedule

On January 9, 2009, U.S. Environmental Protection Agency (U.S. EPA) approved the California Air Resources Board's (ARB or Board) request for authorization to enforce the Transport Refrigeration Unit (TRU) Airborne Toxic Control Measure (ATCM), also known as a waiver from preemption. This decision was published in the Federal Register on January 16, 2009 (see Federal Register, Vol. 74, No. 11, Friday January 16, 2009, Notices, pages 3030 – 3033). This decision affects not only persons in California, but also persons outside the State who would need to comply with California's TRU ATCM regulations to enter California with TRU engines. Therefore, this action has national applicability.

The delay in U.S. EPA's decision has created significant uncertainty for the regulated stakeholders. For this reason, ARB has administratively delayed the enforcement of the first phase of the TRU ATCM's in-use performance standards for six months from the publication date. The six-month enforcement grace period for TRU engine model years 2001 and older will end on July 16, 2009, and enforcement of the in-use performance standards for these model years will begin on July 17, 2009. All other compliance dates for the in-use performance standards are unaffected by this grace period.

Background

On February 26, 2004, ARB adopted the TRU ATCM. The rulemaking became effective December 10, 2004, and is codified at title 13 California Code of Regulations (CCR), section 2477. The TRU ATCM requires all TRUs and TRU generator sets (collectively referred to as TRU) that operate in California, regardless of where they are based (i.e. the ATCM covers both in-state and out-of-state TRUs), to meet in-use performance standards that are to be phased in over the next several years based upon the model year of the TRU engine. Under the first phase of the ATCM, all model year 2001 and older TRUs are required to be in compliance by December 31, 2008 (affected by grace period). Phase-in for 2002 and subsequent model year TRUs must be completed by the end of the seventh year after the TRU engine model year (not affected by grace period). All TRUs operating in California must eventually meet the most stringent in-use standard. The TRU ATCM also requires owners of California-based TRUs to apply for ARB identification numbers (IDN) by January 31, 2009. And, operators of California-based TRUs must submit Operator Reports by January 31, 2009. Both of these dates are now delayed (see below).

Pursuant to section 209(e)(2) of the federal Clean Air Act, on March 28, 2005, ARB requested that U.S. EPA authorize California to enforce the TRU ATCM and waive the implied preemption of that section.

Compliance and Enforcement Policies

Will applications for ARB Identification numbers (IDN) and Operator Reports still be required per the original compliance schedule?

No. ARB will delay the TRU registration and Operator Report schedule. The previous compliance deadline for these submittals was January 31, 2009. The new deadline for IDN applications and Operator Reports is March 16, 2009.

The revised TRU registration and Operator Report schedule follows:

January 6, 2009	ARB began accepting electronic registration applications (IDN applications) and electronic Operator Reports to ARBER. IDNs are issued instantaneously with a complete electronic IDN application. Manual form IDN applications, Operator Reports, and batch upload permission forms are also accepted through the mail. Using manual IDN applications may cause delays in your ability to submit Operator Reports because it may take up to 60 days for ARB to issue IDNs through the manual mail-in process. IDNs are required for submitting Operator Reports. Electronic IDN applications are encouraged.
February 15, 2009	ARB began accepting Batch Uploads for IDN applications to ARBER. Batch uploads can only be performed by those who have submitted a Batch Upload Application and test file. For more information, please see the Batch Upload Help Page .
March 16, 2009	Deadline for California-based TRU registrations and California-based operator reports to be submitted.
April 16, 2009	Deadline for applying the ARB IDNs to both sides of the TRU housing. Enforcement of IDN and Operator Reports begins. (see TRU Advisory 08-10)
July 17, 2009	Enforcement begins for in-use performance standards for TRU engine model years 2001 and older.

TRU Advisory 08-06 provides more information about the information that is needed to apply for IDNs.

Does this mean that ARB will also delay the subsequent phases of the In-Use Performance Standards?

No. There is no plan to delay subsequent phases of the In-Use Performance Standards.

Will those that have already complied get credit for complying early?

No. Only those that complied by June 30, 2008 will be eligible for the ULETRU compliance extension.

Will ARB also not enforce the TRU ATCM's prohibition of sale of noncompliant TRUs during the six-month grace period?

The sales prohibition provisions of the TRU ATCM in title 13 California Code of Regulations, section 2477, subsection (g) prohibit the sale of noncompliant TRUs in the State of California. ARB will not enforce this prohibition during the six-month grace period, on the condition that the seller provides proper written disclosure to the buyer prior to sale that the unit will be noncompliant in the near future. Buyers should be aware that they would be purchasing a TRU which would need to be replaced or brought into compliance by the end of the six-month grace period.

Will ARB revise the TRU ATCM to address any other issues?

No. ARB staff will closely monitor implementation and compliance with the TRU ATCM, but at this time, there are no plans to propose amendments to the TRU ATCM to the Board.

Since my model year 2001 and older TRU is noncompliant, I cannot get an ARB Identification Number. What do I do?

The six-month enforcement grace period ending July 16, 2009, created a conflict with the ARB Equipment Registration (ARBER) software. The compliance deadline for model year 2001 and older TRUs to meet the in-use performance standards was December 31, 2008. Therefore, ARBER will find these units to be noncompliant with the in-use performance standards during the grace period. When the owner attempts to apply for an ARB Identification Number, ARBER cannot issue an IDN due to the missing compliance information. However, March 16, 2009, is the deadline for registering California-based TRUs and submitting Operator Reports for California terminals, and April 16, 2009, is the deadline for affixing the IDN to both sides of the TRU housing.

The owner and operator should do the following:

1. Submit the IDN application to ARBER as completely as possible by March 16, 2009. If the unit is not compliant with the TRU ATCM's in-use performance standard, it will not be issued an IDN, but the owner will have showed due diligence and a good-faith effort to comply with the IDN/registration requirement.
2. If you operate a California terminal where TRUs operate, you must submit an Operator Report for each California terminal to ARBER as completely as possible by March 16, 2009. Enter the terminal address and contact information and list all IDNs that have been issued that are assigned to this terminal. If you do not have an IDN, you may use the following temporary IDN: "990101797" in your incomplete Operator Report. By submitting this incomplete Operator Report, the operator will have showed due diligence and a good-faith effort to comply with the Operator Report requirement.
3. Owners must bring units into compliance by July 17, 2009. Once the TRU engine has been brought into compliance with the in-use performance standard, the owner must revise the information in ARBER to provide the missing compliance information. ARBER will issue an IDN when the application is complete and the unit is in compliance.
4. The operator must update the Operator Report for each terminal to add the IDNs for the units that were brought into compliance during the grace period.
5. The owner is responsible for affixing the IDNs to both sides of the TRU housing within 30 days of being issued an IDN. **Do not affix or paint the temporary IDN (described in step 2, above) to any of your equipment.**

During the grace period, ARB inspectors will not issue citations for missing IDNs and incomplete operator reports, as long as complete and accurate IDN application information was submitted to ARBER, other than the compliance information. ARB recommends that a copy of the print-friendly Certification Page that ARBER issued when the incomplete IDN application was submitted for the noncompliant unit be carried with the TRU at all times during the grace period to demonstrate to ARB inspectors that the owner has taken due diligence and good faith steps to comply with the IDN requirement. The Certification Page is issued online for those applying for IDNs electronically and is mailed to those applying for IDNs with manual mail-in forms.

What if I can't comply with the in-use performance standards by the end of the grace period due to a bottle neck in the availability of replacement engines or retrofit VDECS? Will I get cited and penalized?

There will be no more grace periods after July 17, 2009. ARB recommends TRU owners make their compliance decisions early, showing good-faith efforts to comply and avoid a bottleneck at the end of the grace period (July 16, 2009) for model year 2001 and older TRU engines. In fact, TRU owners should also begin planning in spring 2009 if they have model year 2002 TRU engines, since the compliance date for those engines is December 31, 2009 (and there will be no grace period for this phase). Waiting until the last minute to place an order is not a good faith effort to comply.

In the event of late compliance due to delivery bottlenecks, TRU owners need to document their good faith efforts to comply on time. If an ARB inspector issues a citation for a noncompliant engine, the TRU owner will need to be prepared to present documentation that states the facts of the engine or retrofit order and installation (e.g. with dates of order, expected receipt date, expected installation/compliance date, etc.). Considering the TRU original equipment manufacturers' 12 to 16 week lead time for ordering and installing a replacement engine (which is similar for the retrofit compliance option), orders placed after mid-April 2009 for the 2001 and older model year engines, would almost certainly result in late compliance. **Good faith ordering would need to take place by mid-April 2009.**

On or about July 17, 2009, ARB's enforcement staff will start inspecting TRUs at border crossings, scales, road-side inspection stations, distribution centers, truck stops, and any other place that a TRU may park or operate. If they find a TRU that is not meeting the in-use performance standards, they will probably issue a citation to owners of noncompliant TRU engines. During the settlement conference, the facts of the case would be discussed, including evidence and documentation of good-faith efforts to comply in a timely manner. ARB's Enforcement Division would also look at the owner's compliance history and current compliance with other ARB programs. All of this would be factored into the penalty amount determination, if any. **Penalties can be up to \$10,000 per day per violation.**

For more information

To obtain a copy of the regulation or other related compliance assistance documents, visit the TRU website at <http://www.arb.ca.gov/diesel/tru.htm>. Additional questions may be addressed by calling the toll-free TRU Help Line at 1-888-878-2826 (1-888-TRU-ATCM).

If you require special accommodation or language needs, please call 1-888-878-2826 or email tru@arb.ca.gov.
TTY/TDD/Speech users may dial 711 for a California Relay Service.

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